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 And Keller Lenkner LLC*

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

DIVA LIMOUSINE, LTD., individually and
 on behalf of all others similarly situated,

Plaintiff,

v.

UBER TECHNOLOGIES, INC. et al.,

Defendants.

This Motion Relates to:
*Lyft, Inc. v. Warren Postman and Keller
 Lenkner LLC*, Case No. 3:18-cv-06978

No. 3:18-cv-05546-EMC

No. 3:18-cv-06978

**DEFENDANT KELLER LENKNER
 LLC AND WARREN POSTMAN'S
 ADMINISTRATIVE MOTION TO
 CONSIDER WHETHER CASES
 SHOULD BE RELATED**

Location: Courtroom 5
 Judge: Hon. Edward M. Chen

Warren Postman represented the U.S. Chamber of Commerce in a preemption challenge to a Seattle ordinance allowing for-hire drivers to unionize. Dkt. 40 at 1.¹ The ordinance applied only to independent contractors, and no party to the Seattle litigation ever argued that Uber or Lyft drivers were employees rather than independent contractors. *See* Dkt. 66-3 at 19 (*Seattle* court rejecting Chamber's preemption argument because "the Chamber's claim of *Garmon* pre-emption is not tethered to the facts alleged. Because no party has asserted that for-hire drivers are employees, the issue will not be considered or resolved in this litigation."). Uber was a co-plaintiff in that case. Dkt. 40 at 3. Lyft was not a party to the litigation, but it collaborated behind the scenes with the

¹"Dkt." cites are to the docket in this case, *Diva Limousine v. Uber Technologies, Inc. et al.*, No. 18-cv-5546. "Lyft Dkt." cites are to the docket in *Lyft, Inc. v. Postman et al.*, No. 18-cv-6978.

1 Chamber, Uber, and various other Chamber members, donors, and trade associations. Lyft Dkt. 1
 2 ¶ 4; Dkt. 58 ¶¶ 37-38; Lyft Dkt. 4-2 ¶¶ 10-12.

3 In June 2018, Mr. Postman joined Keller Lenkner LLC. After Mr. Postman joined the firm,
 4 Keller Lenkner served demands for arbitration against Uber and Lyft on behalf of individual drivers
 5 alleging misclassification and seeking unpaid wages and other relief. Dkt. 40 at 2, n.3; Lyft Dkt. 1
 6 ¶ 79. Keller Lenkner also filed this case against Uber on behalf of Diva Limousine, Ltd., alleging
 7 unfair competition enabled by driver misclassification. Dkt. 1 ¶ 1.

8 In the *Diva* case, Uber moved to disqualify Keller Lenkner based on Mr. Postman's work
 9 for the Chamber on the Seattle litigation. Dkt. 40 at 16-17. In its motion, Uber argues that Keller
 10 Lenkner should be disqualified because the Seattle litigation is substantially related to the *Diva*
 11 case, as both supposedly involve the classification of Uber's drivers. *Id.* Lyft now raises the exact
 12 same theory—but instead of moving to disqualify Keller Lenkner in arbitration, Lyft has sued
 13 Keller Lenkner and Mr. Postman, alleging tort theories predicated on the alleged conflict and
 14 seeking to enjoin Keller Lenkner and Mr. Postman from representing any client adverse to Lyft on
 15 misclassification. Lyft Dkt. 1 ¶ 98.

16 Lyft's new case is related to *Diva* under Local Rule 3-12. Cases are related under the rule
 17 if "(1) The actions concern substantially the same parties, property, transaction or event; and (2) It
 18 appears likely that there will be an unduly burdensome duplication of labor and expense or
 19 conflicting results if the cases are conducted before different Judges." Civil L.R. 3-12(a). Both
 20 criteria are satisfied here.

21 First, the *Diva* and *Lyft* cases concern the same parties and event—namely, Uber, Lyft, the
 22 Chamber, and Mr. Postman's involvement in (and the substance of) the Seattle litigation.

23 Second, review of the *Lyft* case by another judge would lead to duplication of effort and
 24 could produce conflicting results. If the cases are not related, a new judge will be required to
 25 duplicate the effort this Court has already expended in *Diva* in reviewing the facts and law relevant
 26 to the alleged conflict. *See, e.g.*, Dkts. 40-46, 55-66, 69-72, 75, 80 (reflecting more than 1,000 pages
 27 of briefing and a 92-minute hearing). And having the underlying conflict issue resolved by separate
 28 judges would raise the possibility of "conflicting results."

1 Based on a straightforward application of Local Rule 3-12, the *Diva* and *Lyft* cases should
2 be deemed related.

3 That the *Diva* case involves issues and claims beyond the role of Uber, Lyft, and Mr.
4 Postman in the Chamber's Seattle litigation does not undermine the benefits of relating the *Lyft*
5 case to the *Diva* case. Lyft's claims turn directly on the existence and scope of an alleged
6 confidential relationship among Uber, Lyft, and the Chamber, as well as the relationship between
7 the Seattle litigation and driver-misclassification claims. This Court's work in *Diva* will create
8 substantial efficiencies in the *Lyft* case, regardless of the fact that the Court will, in all events, need
9 to resolve other issues in *Diva*. Courts in this district have related cases even if they featured
10 "slightly differing parties" and claims, where doing so resulted in efficiency in assessing subsidiary
11 legal or factual questions. *Our Children's Earth Found. v. Nat'l Marine Fisheries Serv.*, No. 14-
12 cv-1130, 2015 WL 4452136, at *12 (N.D. Cal. July 20, 2015) (relating a later-filed case that
13 "involve[d] slightly differing parties, a differing underlying FOIA request, and . . . raised [an issue
14 that was] unrelated to the issues raised in the other cases already before the Court" because the
15 evidence presented in the earlier cases could be significant to the claim in the later case).
16 Accordingly, the Administrative Motion should be granted.

17 Dated: November 26, 2018

Respectfully submitted,

18 /s/ Tom Kayes

19 Tom Kayes

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22 *Counsel for Defendants*

[PROPOSED] ORDER

Having considered Defendants' motion to relate Lyft v. Postman et al, No. 3:18-cv-06978, to Diva Limousine Ltd. v. Uber Technologies, Inc., et al, No. 3:18-cv-05546, and good cause appearing therefore, the Court hereby GRANTS the motion.

Dated: _____, 2018. SO ORDERED.

Hon. Edward M. Chen
United States District Judge

CERTIFICATE OF SERVICE

I certify that I caused the foregoing document to be served on all ECF-registered counsel of record via the Court's CM/ECF system.

Dated: November 26, 2018.

/s/ Tom Kayes